

Comments of the City of Doral

The City of Doral files these comments in response to the Notice of Inquiry ("NOI"), released April 7, 2011, in the above-entitled proceeding. Through these comments, the City of Doral seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges. The Commission should not interfere with these local policies here. The City of Doral has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission's limited expertise on local land use matters all to the same conclusion: this is no place for federal regulation.

The City of Doral has successfully managed its property to encourage deployment of several broadband networks to date. As a result, broadband service is available to 100% of the households and business in our jurisdiction. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property have discouraged broadband deployment. Our community *welcomes* broadband deployment, and our policies allow us to work with any company willing to provide service. No company has cited our policies as a reason that it will not provide service. We believe our policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. On the other hand, we also know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting landowners, commuters, and the general taxpayer. An example of this is found when the City discovers contractors performing work without a permit.

In response to the NOI, the City of Doral provides the following information:

I. *Application Procedures, Forms, Substantive Requirements, and Charges.*

The Commission also asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.

The City of Doral applies the following right-of-way management and facility placement procedures:

- City Ordinance No. 2008-08
- City of Doral Code "Communications Rights of Way"
- Public Works Permit Application

The above referenced documents have been published on our City website.

II. Sources of Delays.

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.

In the City of Doral, most applications are processed very quickly. Almost always in one to three working days, and very rarely in five or more days. However, in some cases, the applicant itself is the source of delays, as a result of incomplete applications, miscommunications about the application process between a main applicant and subcontractor. Also when a change of work scope occurs, or when an unexpected field condition triggers a revision to the project scope, resulting in additional permits and inspections.

III. Improvements.

The City of Doral has recognized a number of practices that have improved the process. Prior to permit submittal, educate applicants/design engineers on providing specific and detailed construction information, especially familiarization with existing project site conditions. This practice has resulted in first-submittal approvals and less plans rejected with revision comments. Encourage first-time and infrequent applicants to communicate with plans reviewer and permit clerk to discuss plans requirements prior to initial submittal.

IV. Permit Charges.

The Commission seeks data "on current permitting charges including all recurring and non-recurring charges, as well as any application, administrative, or processing fees." Specifically, the Commission asks commenters to identify:

- The type of facilities for which such charges are assessed;
- How such charges are structured (e.g., per foot or percent of revenue in the case of rights-of-way fees);
- Whether the community is subject to comprehensive state franchising or rights-of-way-laws;
- Whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- The value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.

In the City of Doral, permit fees are waived to registered applicants, since Florida State Statute exempts communication service providers from paying fees for use of public right-of way.

The charges collected by the State and disbursed to the local communities are important because fees help in the cost recovery of permitting/inspection personnel services and repairs to damaged infrastructure due to utility installation.

V. *Local Policy Objectives.*

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.

In the City of Doral, our policies are designed to achieve the following:

Facilitate the responsible deployment of services; make the services broadly available; ensure public safety; avoid traffic disruption; maintain and repair roadways; prevent public disruption and damage to abutting property; minimize accelerated deterioration to roads that accompanies street cuts; satisfy aesthetic, environmental, or historic preservation concerns; avoid damage to the property of others; obtain fair compensation for use of public property.

VI. *Possible Commission Actions.*

Finally, the Commission asks what actions the Commission might take in this area.

As noted above, the City of Doral strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services, such as repairs to damaged infrastructure. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

CONCLUSION

The City of Doral urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in the City of Doral, our policies and procedures are designed to protect important local interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband

service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Yvonne Soler-McKinley".

City of Doral

By: Yvonne Soler-McKinley
City Manager
8300 NW 53rd Street, Suite 100
Doral, FL 33166

Cc: National League of Cities, Bonavita@nlc.org
National Association of Counties, jarnold@naco.org
NATOA, straloy@natoa.org
The United States Conference of Mayors, rthaniel@usmayors.org

Florida League of Cities

ALERT

FAST
Federal
Action Strike Team

TO: Key Officials
Members, Federal Action Strike Team
Directors, Local and Regional Leagues

FROM: John Charles Thomas, Director
Policy and Political Affairs

Date: June 28, 2011

RE: **FCC Notice of Inquiry Regarding Barriers to Broadband Deployment**

On April 7, the Federal Communications Commission (FCC) released a Notice of Inquiry (NOI) regarding barriers to broadband deployment, including the management of public rights-of-way by local governments and the collection of compensation for the use of public rights-of-way. The NOI was officially published in the *Federal Register* on May 17.

NLC, the U.S. Conference of Mayors, the National Association of Counties, the National Association of Telecommunications Officers and Advisors, the International Municipal Lawyers Association, and the Government Finance Officers Association plan to file joint comments and urge all members to help preserve local rights-of-way authority and compensation by filing individual comments.

As you may know, the FCC issued an NOI seeking information on a number of issues dealing with local public rights-of-way management, compensation, and wireless facilities siting requirements in April. The agency seeks to work together with state and local governments, industry, and other stakeholders to identify ways to increase broadband deployment. Specifically, the NOI seeks information and data regarding challenges, best practices, and educational efforts. Some questions posed by the FCC directly challenge local governments' land-use authority. The FCC will use the information it gathers to determine the need for policy and rules surrounding deployment. Any regulatory action taken by the FCC that limits or changes the way localities are permitted to collect compensation for use of the rights-of-way could drastically reduce local government revenue.

The National League of Cities will file comments that encompass the broader policy issues underlying the NOI along with the U.S. Conference of Mayors, the National Association of Counties, the National Association of Telecommunications Officers Association, the Government Finance Officers Association and the International Municipal Lawyers Association. Recognizing that the policies surrounding rights of way are complex and that state and local administrative requirements often reflect important community- specific public interest objectives (such as ensuring public safety and maintaining the roadways and other infrastructure investments), **we encourage municipalities to file individual comments before the July 18 deadline.**

It is imperative that cities of all sizes respond so the FCC will be provided with an accurate, detailed record of broadband deployment issues to determine the nature and extent of any problems.

NLC has several templates, instructions, and additional information online at <http://www.nlc.org/influence-federal-policy/advocacy/regulatory-advocacy/regulations---communications--technology>.

Should you have any questions, please contact Allison Payne at the Florida League of Cities at 850-701-3602 or e-mail: apayne@flcities.com

Attachment